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August 24, 2000

RECEIVED

AUG 24 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: BellSouth Written *Ex Parte*
***Promotion of Competitive Networks in Local Telecommunications Markets* (WT Docket No. 99-217); *Implementation of Local Competition Provisions in the Telecommunications Act of 1996* (CC Docket No. 96-98)**

Dear Ms. Salas:

On August 21, 2000, BellSouth filed an *ex parte* in the above-referenced proceedings. After filing its *ex parte*, BellSouth discovered that it had incorrectly listed one of the docket numbers as WT Docket No. 97-213. The correct docket numbers are WT Docket No. 99-217 and CC Docket No. 96-98. Therefore, we are re-filing this *ex parte* in the appropriate dockets.

Pursuant to Section 1.1206(b)(1) of the Commission's rules (47 C.F.R. § 64.1206(b)(1)), BellSouth submits an original and four copies of a written *ex parte* in the above-captioned proceedings.

Please stamp the enclosed duplicate as received. If you have any questions regarding this submission, please do not hesitate to contact me at the above-referenced number.

Respectfully submitted,

Angela N. Brown

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List A B C D E

Attachment

cc: Jeffrey Steinberg, Wireless Telecommunications Bureau (via hand delivery)
Leon Jackler, Wireless Telecommunications Bureau, (via hand delivery)
Joel Taubenblatt, Wireless Telecommunications Bureau, (via hand delivery)

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DEMARCATION POINT

A. Synopsis:

In the pending "Competitive Networks" proceeding (WT Docket No. 99-217), the Commission is considering changing the existing Part 68.3 rule governing the location of the demarcation point. Specifically, the Commission is considering whether to adopt Minimum Point Of Entry ("MPOE") as the mandatory demarcation point location for telecommunications services in a multi-tenant environment ("MTE"). (NPRM, ¶ 67) This paper addresses the issues surrounding the location of the demarcation point, including whether such a rule would result in increased access by end users to services offered by Competitive Local Exchange Carriers ("CLECs") – one of the primary objectives of this proceeding.

The following conclusions are reached:

1. A mandatory MPOE rule would strip away property owners' current authority and flexibility to designate demarcation points. Mandating MPOE demarcation is bad policy as the Commission recognized in two previous dockets (CC Docket No. 81-216 and CC Docket No. 88-57).

2. CLEC access to end users via ILEC-owned subloops is available now – in an orderly manner that is regulated by the FCC and state commissions. Absent strict FCC control over property owners, forcibly disintegrating the ILECs' control over their intra-MTE facilities will lead to chaotic service provisioning and could, as pointed out by the Association for Local Telecommunications Services, "worsen the plight of CLECs." (*Ex Parte* Presentation, Letter from Gunnar D. Halley, Counsel for Association For Local Telecommunications Services, to Magalie Roman Salas, Secretary, FCC, WT Docket No. 99-200 and CC Docket No. 96-98, at 1 (dated Aug. 4, 2000)).

3. Even CLECs do not uniformly support mandatory MPOE. These CLECs correctly recognize that forcing all building owners and carriers to locate the demarcation point at the MPOE is not the answer. *See Ex Parte* Presentation, Letter from Gunnar D. Halley to Magalie Roman Salas, Secretary, FCC, WT Docket No. 99-200 and CC Docket No. 96-98 (dated Aug. 14, 2000).

4. Forced MPOE could seriously impede the deployment of important new broadband technologies and detrimentally affect some end users' services. At this time, there are no end user comments on record relative to their need or desire for forced MPOE.

5. Jurisdictional issues will arise because not all states favor, nor have adopted, mandatory MPOE.

6. A mandatory MPOE could significantly affect the ILECs' accounting for intra-MTE plant, amounting to millions and perhaps billions of dollars. In addition, forcing ILECs

to relinquish control over embedded intra-MTE facilities could constitute a "taking." A thorough analysis of the financial impact of such a change must be done before any further consideration is given to altering the current rule.

7. Mandatory MPOE could harm resellers of ILEC services because it would force them to deal with "third parties" (*i.e.*, whoever is controlling access to the intra-MTE facilities). The end result may be reduced end-user access to competitive services and increased costs to resellers for facilities beyond the MPOE demarcation point of the ILEC's services.

The following recommendations are offered:

1. ***Retain the existing Part 68 demarcation point rule.*** The flexibility provided by the existing rule is necessary to accommodate diverse technology deployments of carriers as well as the diverse needs of end users, state regulators, property owners, resellers and facilities-based CLECs. Retaining the existing rule is an appropriate compromise solution.

2. ***Allow time for existing FCC rules to work.*** The Commission has already ordered unbundling of ILEC networks. To the extent that CLECs need and desire access to embedded ILEC facilities at MTE properties, this issue is being resolved.

3. ***Allow time for market forces to work.*** Property owners are becoming more involved with telecommunications. Those who are willing and capable of managing wire and telecommunications equipment on their properties are doing so. Hundreds of property owners filed comments in the *Competitive Networks* proceeding objecting to forced MPOE and supporting retention of the existing Part 68.3 rule. Forcing MPOE on unwilling property owners will negatively impact the ability of end users to access telecommunications services.[1]

4. ***Encourage property owners to plan for access by multiple carriers.*** Property owners can minimize building access problems without Commission intervention through effective infrastructure design, planning, and installation. Therefore, rather than impose constricting regulations such as mandatory MPOE on property owners, the Commission should encourage owners to utilize industry standards, methods, and procedures such as those promulgated by ANSI/EIA/TIA, BICSI and other such organizations. It is through such organizations that owners will acquire the knowledge and skills to effectively manage intra-MTE telecommunications facilities and make MPOE demarcation a more feasible alternative.

[1] The intent of the Telecommunications Act of 1996 Act ("1996 Act") was to establish a "pro-competitive, deregulatory national policy framework." Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113, at 1 (1996). BellSouth believes that imposing a mandatory MPOE rule will undermine that goal. Rather than promulgating additional, unnecessary regulation, the Commission should allow the existing rules and market forces to work to bring new and competitive services to end users.

B. Existing FCC Rules:

Part 68.3 currently permits carriers to adopt a uniform and non-discriminatory MPOE policy. If a carrier has not adopted a MPOE policy, then the MTE-property owner has the authority to designate whether there will be one demarcation point for the property (*i.e.*, at the MPOE) or, alternatively, a demarcation point at each tenant's unit (premises demarcation). 47 C.F.R. § 68.3(b).

C. What Does Point Of Demarcation Really Mean?

The point of demarcation has three inherent "dividing line" characteristics:

1. Physical Dividing Line - where the regulated carrier's plant facilities are physically terminated and interconnected with deregulated facilities. Typically, this interconnection is accomplished through a Registered Jack (*e.g.*, RJ11, RJ21X, etc.) as specified in Part 68 rules.

2. Facilities Control Dividing Line - where the control of facilities beyond the demarcation point, but not necessarily ownership, lies with the property owner, the end user, or a carrier. Part 68 does not prohibit a regulated carrier from installing, maintaining and owning deregulated facilities pursuant to the request of a customer or property owner. However, the carrier itself cannot exert any control over access to such facilities.

3. Accounting Dividing Line - where the carrier's accounting treatment of its installed plant facilities changes from regulated to deregulated accounts. Generally, this change is at the physical interconnection point as described in (1.) above.

Any changes to the existing demarcation point rules must address all three dividing line characteristics of the demarcation point. Failure to do so will result in an incomplete analysis of the potential impact of a rule change. As discussed more fully below, mandating that the demarcation point always be located at the MPOE could diminish customer access to competitive telecommunications services, including advanced technologies.

D. Effects Of A "Mandatory MPOE" Rule:

1. Effect on CLECs: A mandatory MPOE rule could limit CLEC flexibility in constructing facilities at MTEs. Today, CLECs do not operate under the supposition that they must, by force of FCC rule, establish service demarcation points at the MPOE and relinquish control of facilities beyond that point. To the extent that a CLEC does, in fact, relinquish ownership and/or control of its facilities at a MTE today, it is the result of a contractual agreement with the property owner, not the Part 68 rules. Today, CLECs are free to establish service demarcation points at any location on the MTE property and to own, maintain, and control any facilities that they install subject, of course, to the permission of the MTE property owner.

In practice, the MTE owner's prerogatives, as stipulated in the existing Part 68.3 rules, are functionally applicable to CLECs today as a result of marketplace machinations, which is consistent with apparent FCC intentions. A mandatory MPOE rule that applied equally to CLECs and ILECs could unnecessarily constrain existing CLEC procedures and negotiations with owners. If CLECs were not required to demarc services at MPOE, but ILECs were, an asymmetrical situation would exist that would be confusing to end users and property owners and would unfairly constrict ILECs' ability to meet end users' demands. Thus, the Commission should make clear that CLECs and ILECs alike have an obligation to provide non-discriminatory access to intra-building facilities that they own or control.

2. Effect of MPOE on ILECs:

a) Moving Existing Demarcation Points To MPOE (Retroactive Rule): Depending on the nature of the service delivered, many customers prefer that the demarcation point be located at their premises in order to maximize network transmission efficiencies and to relieve the MTE building owner from responsibility for installing and maintaining such equipment. Physically moving existing equipment to MPOE would be an extremely costly and labor intensive effort. In addition, such moves of wiring and equipment to MPOE would cause service disruptions to existing services[2] – a result that end users would find totally intolerable. The adverse effects of a forced move of physical demarcation points to MPOE for all properties are so substantial as to render such an alternative impractical and virtually impossible to implement.

Assuming the Commission acknowledges the total impracticality of adopting a mandatory MPOE rule that requires the physical relocation of all demarcation points (as discussed above), it might appear logical for the FCC to seek a simplified approach involving the establishment of "virtual MPOE" whereby no physical change is made. In such a circumstance, it might be proposed that ILECs could possibly reclassify all facilities beyond the "virtual MPOE" to deregulated accounts and remove these intra-MTE facilities from its capital asset accounts. Putting aside the effects that such a change might have on the ILECs' rate structures, cost studies, tariffs, etc., one important result would be the loss of federal and state regulator control over facilities beyond the "virtual" MPOE demarcation point, since these facilities would now be deregulated. Consequently, regulators could lose the authority to impose Section 319 subloop unbundling requirements on ILECs.

Contrary to previous pleadings by some CLECs demanding mandatory MPOE, it has become apparent to some (*see* ALTS 8/4/00 *Ex Parte*) that, absent the Commission's ability and willingness to impose strict controls over property owners' obligations to provide access to such intra-MTE facilities, loss of ILEC UNEs could "worsen the

[2] The Commission must keep in mind that Section 256(a)(2) of the 1996 Act imposes upon the agency the duty "to ensure the ability of end users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks." 47 U.S.C. § 256(a)(2).

plight of CLECs." Clearly, the FCC has no authority to impose Section 319 obligations on ILEC operations that are deregulated.

Putting aside the regulatory and accounting aspects of a "virtual MPOE" demarcation point, the loss of ILEC control and administration of intra-MPOE facilities would result in chaotic service provisioning by all carriers. As evidenced by hundreds of letters to the FCC from individual property owners, most owners clearly do not wish to have the maintenance and administrative responsibilities for existing ILEC facilities thrust upon them until and unless they establish the systems and processes to do so. The loss of ILEC control and administration over existing intra-MTE facilities without property owner assumption of these responsibilities would result in the uncontrolled and unadministered taking of such facilities by any and all carriers and other parties. This outcome would lead to immediate and severe service disruption to end user-services and existing ILEC networks.[3] It must be remembered that since ILEC facilities are used by CLECs for resale and as UNEs, the loss of ILEC control over these facilities will negatively impact CLECs' services to their end users.

b) Effect on ILECs of Establishing Demarcation Points Prospectively at MPOE:
The Commission must seriously consider the impacts of a prospective MPOE demarcation rule. A complete analysis requires an assessment of the three characteristics of the demarcation point.

(1) Accounting: A mandatory MPOE rule would require ILECs to treat facilities beyond the demarcation point (to the extent that such facilities were installed at the request of the MTE owner or end user) on a deregulated basis. As pointed out in D.2.a. above, doing so would relieve the ILECs of any obligation to offer access to such facilities pursuant to Section 319 of the 1996 Act, even assuming that the purchaser of an ILEC's deregulated services desired that the ILEC own and maintain the facilities after installation. Thus, an accounting change associated with a mandatory, prospective MPOE, though serving to forcibly deregulate more of the ILECs' networks, would seem to have a negative, rather than positive, effect on the ability of end users to obtain competitive services.

(2) Ownership/Control: Under a prospective MPOE demarcation rule, most ILEC-installed facilities beyond the MPOE demarcation point would be owned, controlled, and maintained by the MTE owner via the owner's choice of vendor for such products and services. Even if the owner chose the ILEC to own and maintain the deregulated facilities under contract, control for purposes of access would ultimately be vested in the MTE owner.

Given this scenario, the question arises: Will control of facilities beyond the MPOE by the MTE owner allow CLECs greater access to end users? The answer to this question probably depends on the ability of the FCC to impose

[3] Again, the Commission has a statutory obligation to "to ensure the ability of end users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks." 47 U.S.C. § 256(a)(2).

requirements on MTE owners that are equivalent to the unbundling obligations imposed on ILECs. Based upon the "Wired For Profit" publication by the Building Owners and Managers Association ("BOMA"), MTE owners clearly have an economic incentive to control access to wiring and transmission equipment on their properties.

Thus, relative to a prospective rule mandating MPOE demarcation at all properties, there is no evidence to demonstrate that shifting the ownership and control of wiring will, in and of itself and absent regulatory constraints on property owners, result in more economic or efficient CLEC access to end users. As has been pointed out previously, this is just the situation that alarms the members of ALTS.

(3) Physical Interconnection: A prospective MPOE rule, as apparently envisioned by some CLECs, supposes that the ILECs' regulated facilities would be physically terminated at one point on the MTE property, close to where the facilities cross the property line or enter a building. This arrangement, according to these MPOE proponents, will ensure that the ILEC cannot control any facilities beyond MPOE and, thus, cannot restrict access to on-premises wiring. Furthermore, (as the argument goes) by keeping the ILEC "out" of the MTE property, valuable support structures (conduit, raceways, etc.) could be used by CLECs. Putting aside the self-serving aspects of these CLEC arguments, the result that is envisioned would not always be true because it assumes that the MTE owner would not contract with the ILEC to place deregulated facilities. Where the owner did choose the ILEC, although the ILEC would not control access to the facilities (the MTE owner would), this does not obviate the "problem" that some CLECs see with an ILEC occupying support structures.

However, assume a scenario where all ILEC wiring "stops" at the MPOE. There remains the issue of who will be responsible for extending the ILEC's telecommunications services to end users, assuming that at least some MTE-end users want ILEC services. (If we assume that no end users at a subject MTE property want ILEC services, then the issue of MPOE demarcation is moot, since the ILEC will not serve the property at all.) Will the responsibility fall to the MTE owner, the CLEC(s) or end users? The answer is none of the above. Experience has demonstrated that a CLEC or MTE owner may offer a copper wire pathway (essentially unbundling of the CLEC's facilities to ILECs); however, any transmission equipment required either at the originating or terminating end of the copper pathway will remain the responsibility of the ILEC.

In an MPOE scenario, ILECs' Network Channel Terminating Equipment ("NCTE") is located at the MPOE of the building or campus property. A technical problem arises when the location of the end user exceeds distance limitations between the NCTE and the end user's equipment. In *some* situations

with *certain* technologies, repeaters can be installed by the customer or building owner to regenerate the degraded signal. However, in such scenarios the installation of repeaters is unnecessary because the need is driven solely by the technically unnecessary insertion of circuit loss due to MPOE demarcation. Use of repeaters in such scenarios is a waste of end users' and/or property owners' time, manpower, and money. Furthermore, with some technologies, such regeneration is not technically feasible.

This analysis of the effects of a prospective MPOE rule continues with a discussion of broadband technologies currently used by ILECs and some CLECs for that matter. The discussion explains how a prospective mandatory MPOE demarcation rule will have disabling effects when a property owner has been forced to assume responsibility for intra-MTE facilities that the owner is neither willing nor capable of executing.

Example Number 1: Fiber In The Loop (FITL) Technology. This technology, commonly used for residential MTE (apartment) applications, employs a serving Host Digital Terminal ("HDT") that is typically located on a nearby public right-of-way so that multiple properties can be served from one HDT. Single mode fiber optic cable is extended from the HDT to multiple Optical Network Units ("ONUs"), each of which needs to be located as close to the end user's premises as possible, but generally no further than 500 feet from the end user. In practice, ONUs are typically placed either on the outside wall of each apartment building at a MTE complex or inside of equipment rooms in each building. Each ONU serves approximately 12-24 living units. Copper wiring between the ONU and the end user's network interface jack/inside wiring is the final link in the carrier's network. If the carrier is required to establish the demarcation point for its facilities at the MPOE (*i.e.*, the property line or thereabouts), the ONUs will likewise have to be located at the MPOE. In most cases, then, the 500-foot limitation from the ONU to the end user will be exceeded, requiring that another, potentially more expensive and technologically inferior, serving arrangement be chosen and put in place. It is highly unlikely, today, that the MTE owner is ready and willing to provide accessible single mode fiber optic cable for the carrier's use. It is even more unlikely that the MTE owner will provide access to, or even has deployed, ONUs located at each building. Thus, the result of forcing MPOE demarcation on an owner who is unable and/or unwilling to provide such facilities is that FITL becomes an inoperable technology. FITL is state-of-the-art technology and is consistent with the FCC's desire to bring advanced telecommunications services to all users.

Example Number 2: Carrier Provides Broadband Services To A Business Customer. A typical scenario involves the deployment of single mode fiber optic cable to a MTE highrise commercial building. Requested data rates by major users typically are at DS3 and OC 1/3/12/48 and even OC192 levels. Delivery of these broadband services requires the placement of multiplexers at,

either or both, a common space in the building and/or at the end user's premises.

In many cases, especially (and ironically) involving CLECs as end users, the end user demands that no equipment be located in any space other than within their own premises (*i.e.*, for security and network reliability reasons). Note that these premises may be located far beyond the MPOE of the building. In most such cases, single mode fiber must be installed directly to the end user's premises. Unless the MTE owner can provide single mode fiber, multiplexers and other associated transmission equipment beyond the MPOE, the serving carrier must install these facilities. Even assuming the highly improbable situation where ILECs and other carriers did have access to such owner-provided facilities, the interoperability and compatibility problems between the carrier's central office equipment or remote switch and the owner's on-premises multiplexers would render such an arrangement technically infeasible.

MPOE demarcation is not an arrangement that is likely to work for *any* carrier providing fiber-based services, at least in today's environment and in the foreseeable future. If a survey were done to determine the number of CLECs utilizing owner-provided broadband multiplexers, fiber optic cable, and digital loop carrier equipment inside of buildings today, the answer would, in all likelihood, be none. Similar to ILECs, CLECs know that the reliability of their networks is best maintained through the use of their own facilities wherever possible.

This is not to say that MPOE is impossible under the most idealistic circumstances (*i.e.*, where the owner is fully capable and willing to extend broadband services). However, forcing MPOE on all property owners will seriously impede the provisioning of new technology – and as a result, will deny end users access to new technologies.

The evolution of network technologies is clearly moving in the direction of (a) fiber to the end user, and (b) direct, unbroken transmission channels to the end user. The deployment of Digital Subscriber Line or "DSL" services also is negatively affected by the introduction of unnecessary interconnection points. The Commission must understand and critically analyze the potential impact of forced MPOE on its goal to help proliferate new technologies.

3. Effect of Forced MPOE on Building Owners

It is clear from comments filed by hundreds of building owners that they do not wish to assume responsibility for facilities beyond the MPOE. Most building owners are simply not in a position today to assume this responsibility, and based upon experience and comments received by the Commission, it appears likely that the majority of owners do not want to be in this position. Nevertheless, to the extent that individual owners are willing and technically able to effectuate MPOE demarcation, the current Part 68.3 affords them the ability to do so. Some may choose this option; most have not.

4. Effect of Forced MPOE on End Users

Unfortunately, there is a dearth of end-user comments in the *Competitive Networks* proceeding. Based on numerous surveys of end users, however, it can be concluded very easily that end users demand end-to-end responsibility from their network providers. In today's environment, carriers are required to provide service guarantees, especially for broadband services. With forced MPOE demarcation and an owner who is unwilling and/or unable to provide adequate intra-MTE facilities, it will be impossible for carriers to provide the service guarantees that end users demand and have become accustomed.

No doubt that end users want increased access to competitive providers; however, as this paper demonstrates, forced MPOE demarcation will not result in increased access, but rather will most likely result in less access due to the inability of CLECs to obtain network elements on a cost-effective and reliable basis. If the Commission is not convinced of end users' needs and desires relative to establishment of demarcation points, it should institute a separate inquiry to obtain such input.

E. Conclusion

In sum, the Commission is urged to take the following actions:

1. ***Retain the existing Part 68 demarcation point rule.*** The flexibility provided by the existing rule is necessary to accommodate diverse technology deployments of carriers as well as the diverse needs of end users, state regulators, property owners, resellers and facilities-based CLECs. Retaining the existing rule is a correct and appropriate compromise solution.

2. ***Allow time for existing FCC rules to work.*** The Commission has already ordered unbundling of ILEC networks. To the extent that CLECs need and desire access to embedded ILEC facilities at MTE properties, this issue is being resolved.

3. ***Allow time for market forces to work.*** Property owners are becoming more involved with telecommunications. Those who are willing and capable of managing wire and telecommunications equipment on their properties are doing so. Hundreds of property owners filed comments in the instant proceeding objecting to mandatory MPOE and supporting retention of the existing Part 68.3 rule. Forcing MPOE on unwilling property owners will negatively impact the ability of end users to access telecommunications services.

4. ***Encourage property owners to plan for access by multiple carriers.*** Property owners can minimize building access problems without Commission intervention through effective infrastructure design, planning, and installation. Therefore, rather than impose constricting regulations on property owners, such as mandatory MPOE, the Commission should encourage owners to utilize industry standards, methods, and procedures such as those promulgated by ANSI/EIA/TIA, BICSI and other such organizations. It is through such organizations that owners will acquire the knowledge and skills to effectively manage intra-MTE telecommunications facilities and make MPOE demarcation a more feasible alternative.